surely, the corporate entity is present represented in tangible form by the persons who control its affairs.[17]

It is, however, entirely competent for the creating State to fix local domicile as one of the terms of the right to exist.[18] Whether it has in fact done so is often open to inquiry. If the business to be conducted is of a purely local nature the legislative intention to assign domicile to a certain locality is either expressed or clearly implied.[19] Where on the other hand the business is of a general character the legislative intention is not so easily discovered. An instance is presented by a recent case, *Inter-Southern Life Ins. Co.* v. *Milliken* (Ky. 1912) 149 S. W. 875. A corporation, as required by the enabling act, in its charter designated an unincorporated village near Louisville as its domicile. Directors' meetings were nominally held there, but the entire corporate business was conducted in Louisville. The court admitted that the charter specification was conclusive if in good faith,[20] but held that inasmuch as it was used merely to evade taxation, it was the real intention of the corporation to be domiciled at Louisville. In such a situation there are two possible interpretations of the statute requiring the designation of domicile in the charter. First, if the legislature meant to make corporate domicile certain and specific, it seems inevitable that the designation by the corporation is conclusive even when used to evade taxation.[21] Second, if the legislature were seeking a true and *bona fide* designation of corporate domicile, the courts should go behind the charter and ascertain the real domicile, disregarding a mere evasive statement in the charter.[22] The second view, followed by the principal case, is certainly more reasonable, and secures justice in every case while defeating an inequitable use of the statute.

THE CONSTITUTIONALITY OF A LAW EXCLUDING ALIENS FROM THE LIQUOR BUSINESS.—A constitutional question which has received little adequate judicial determination is raised by the recent case of *Bloomfield* v. *State* (Oh. 1912) 99 N. E. 309, which decides that a statute

[17]Another test is possibly worthy of notice: Some one act may usually be selected as the principal corporate function, and it may be inferred that it was the corporate intention to be domiciled where this function is exercised. So a manufacturing corporation would be domiciled at its factory, see Kennett *v.* Woodworth etc. Co. (1895) 68 N. H. 432; Oswego Starch Factory *v.* Dolloway *supra,* a business or railway corporation at its principal office, Orange & Alexandria R. R. Co. *v.* City Council of Alexandria *supra,* and a holding company at the place where its directors' or stockholders' meetings are held. This test is, of course, open to the objection that it does not give a fixed guide but varies according to the nature of the corporation.

[18]Western Trans. Co. *v.* Scheu (1859) 19 N. Y. 408; Pelton *v.* Trans. Co. (1882) 37 Oh. St. 450; *cf.* People *ex rel. v.* Barker (N. Y. 1895) 87 Hun 341.

[19]Booth *v.* Wonderly (1873) 36 N. J. L. 250; Savigny, Confl. of Laws, 64.

[20]City of Covington *v.* Standard Oil Co. (1910) 137 Ky. 837.

[21]Union etc. Co. *v.* Buffalo (1880) 82 N. Y. 351; Western Trans. Co. *v.* Scheu *supra;* Pelton *v.* Trans. Co. *supra; cf.* People *ex rel v.* Barker *supra.*

[22]Ga. Fire Ins. Co. *v.* Cedartown (1910) 134 Ga. 87; Portsmouth *v.* Granage etc. Co. (1907) 148 Mich. 230; Detroit Trans. Co. *v.* Board of Assessors (1892) 91 Mich. 382; Woodsum Steamboat Co. *v.* Sunapee *supra.*

excluding aliens from the liquor business is not a denial of the equal protection of the laws. Since aliens come within the scope of this clause of the Fourteenth Amendment,[1] it is the meaning and application of the provision which is put in issue. This is frequently interpreted as being satisfied by the imposition of like burdens and the bestowal of like rights upon all persons similarly situated, by laws which operate alike upon all persons and property under the same circumstances and conditions.[2] The language of these decisions seems to leave it within the uncontrolled power of the legislature to decide at will just what "circumstances and conditions" shall be chosen as the basis of classification, provided only that all the members of each class are treated alike. But the better doctrine requires, in addition, that the classification should be reasonable, and based upon such natural differences in circumstances as require different legislative treatment in order to effect the legitimate purposes of the law.[3] In no function of government is classification more frequent than in the exercise of the police power, which by its very nature requires discrimination between the dangerous and the salutary, if nothing else. Such discrimination, however, is not objectionable if it is reasonable and based upon considerations of public welfare.[4] A typical instance of the police power is seen in the regulation of trades and occupations which concern the public peace, health or morals.[5] This, although legitimate, is of course a restriction upon every man's right to engage freely in the occupation of his choice.[6]

Because of its unique place in the social fabric, the liquor business is peculiarly within the police power.[7] The legislature, if it sees fit, may prohibit it entirely,[8] and may therefore exercise the lesser power of regulation.[9] The courts will uphold restrictions upon this trade which could not be imposed upon occupations not subject to prohibition, maintaining that the holder of a liquor license enjoys a mere favor or privilege, which may be granted upon any terms whatsoever.[10] That a license is a privilege, however, is true only in certain senses of the word: first, in that a licensee may do things which a non-

[1]Yick Wo. *v.* Hopkins (1885) 118 U. S. 356; U. S. Comp. Stat. § 1977.

[2]Barbier *v.* Connolly (1884) 113 U. S. 27, 31, 32; Missouri Pacific Ry. Co. *v.* Mackey (1888) 127 U. S. 205. It must be noted, however, that these cases are really predicated upon some reasonable basis for the discrimination of the statute.

[3]2 Willoughby on the Constitution, §§ 480, 484; Bells Gap. Ry. Co. *v.* Pennsylvania (1889) 134 U. S. 232; Gulf, Colorado and Sante Fe Ry. *v.* Ellis (1896) 165 U. S. 150; Connolly *v.* Union Sewer Pipe Co. (1901) 184 U. S. 540, 558, 563.

[4]Soon King *v.* Crowley (1884) 113 U. S. 703; Carroll *v.* Greenwich Ins. Co. (1905) 199 U. S. 401, 411; see Bachtel *v.* Wilson (1906) 204 U. S. 36, 41.

[5]Freund, Police Power, 532.

[6]Crowley *v.* Christensen (1890) 137 U. S. 86; Dent *v.* West Virginia (1888) 129 U. S. 114; Stockton Laundry Case (1886) 26 Fed. 611; *In re* Parrott (1880) 1 Fed. 481.

[7]But see the statement of Mr. Joseph H. Choate in arguing Mugler *v.* Kansas (1887) 123 U. S. 623, 648.

[8]Mugler *v.* Kansas *supra;* Kidd *v.* Pearson (1888) 128 U. S. 1.

[9]Bartemeyer *v.* Iowa (1873) 18 Wall. 129; Crowley *v.* Christensen *supra.*

[10]Bertholf *v.* O'Reilly (1878) 74 N. Y. 509; State *v.* Ludington (1873) 33 Wis. 107; Trageser *v.* Gray (1890) 73 Md. 250.

licensee may not; and second, in that a licensee has only a permit, and not a property right. But any conception of a license as a privilege in the sense of a mere favor to be granted or denied at the whim or pleasure of the legislature, and arbitrarily withheld from a whole class of unoffending persons, would be quite anomalous; and its origin in the police power would not be enough to remove such a clear denial of equal protection from the prohibition of the Fourteenth Amendment.

The peculiar subjection of the liquor trade to the police power, therefore, can be carried at most only to the extent of justifying extraordinary restrictions imposed upon licensees in their enjoyment of the "favors" granted by the State. It does not detract from the proposition that the State cannot arbitrarily set aside a class of persons and deny them, without reason, an equal opportunity to receive those favors.[11] An unreasonable denial of privileges is plainly as unconstitutional as an undeserved grant thereof.[12] The exclusion of any class of persons from the liquor trade can be supported, therefore, not on grounds of "peculiar subjection to the police power," but only as a reasonable discrimination based upon considerations of public welfare.[13] It is doubtful whether citizenship is as adequate an indication of fitness to carry on the trade as the usual qualifications of age, sex and good moral character, and the test would seem to be unnecessary if imposed in addition to these qualifications. The reasoning of the principal case, "that an alien cannot be sufficiently acquainted with our institutions and our life to enable him to appreciate the relation of this particular business to our entire social fabric," is perhaps open to dispute.[14] But the precedents found in those cases which uphold laws excluding certain classes from the liquor trade,[15] or which apply such laws without any apparent doubt of their constitutionality,[16] would make it very difficult in this instance to dissuade the court from the presumption in favor of the constitutionality of any legislation.

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[11]Aliens have no enforceable claim to participation in the State's fisheries, which are the property of its citizens; but a statute excluding Chinese alone from the fisheries has been held unconstitutional. *Re* Ah Chong (1880) 2 Fed. 733.

[12]State *v.* Shedroi (1903) 75 Vt. 277; State *v.* Gabrowski (1900) 111 Iowa 496; State *v.* Whitcomb (1904) 122 Wis. 110, 122; Brown *v.* Russell (1896) 166 Mass. 14.

[13]Peddling is another trade peculiarly within the police power, as being open to fraud. Emert *v.* Missouri (1894) 156 U. S. 296; Morrill *v.* State (1875) 38 Wis. 428. Statutes excluding aliens therefrom have been both upheld, Comw. *v.* Hana (1907) 195 Mass. 262, and declared unconstitutional. State *v.* Montgomery (1900) 94 Maine 192. A license may be required of barbers, State *v.* Zeno (1900) 79 Minn. 80, but the exclusion of aliens from the trade was declared unconstitutional. Templar *v.* Barbers' Board (1902) 131 Mich. 254. The case of admission to the bar is unique, since lawyers are officers of the court. *In re* Lockwood (1893) 154 U. S. 116; Matter of Taylor (1877) 48 Md. 28.

[14]A different situation is presented by statutes excluding non-residents, since the State can reasonably restrict the grant of licenses to persons amenable to its jurisdiction. Welch *v.* State (1890) 126 Ind. 71; Mette *v.* McGuckin (1885) 18 Neb. 323.

[15]Trageser *v.* Gray *supra;* Groesch *v.* State (1873) 42 Ind. 547; Intoxicating Liquor Cases (1881) 25 Kan. 751; Blair *v.* Kilpatrick (1872) 40 Ind. 312; *In re* Carragher (1910) 149 Iowa 225.

[16]*In re* Trimble's License (1909) 41 Pa. Super. Ct. 370; State *v.* Burlington Co. (1911) 84 Vt. 243; Miller *v.* Wade (1877) 58 Ind. 91.